

AMENDED IN ASSEMBLY MARCH 2, 2000

AMENDED IN ASSEMBLY JULY 2, 1999

AMENDED IN SENATE APRIL 5, 1999

**SENATE BILL**

**No. 451**

---

**Introduced by Senator Schiff**

February 17, 1999

---

---

*An act to add Section 6129.5 to the Penal Code, relating to criminal conduct of public employees. An act to amend Sections 6601.3, 6601.5, and 6602 of the Welfare and Institutions Code, relating to sexually violent predators.*

LEGISLATIVE COUNSEL'S DIGEST

SB 451, as amended, Schiff. ~~Criminal conduct by public employees: investigations~~ Sexually violent predators: commitment petitions.

*Existing law establishes procedures under which a person under the jurisdiction of the Department of Corrections may be referred for evaluation at least 6 months prior to the person's scheduled date for release from prison if the director determines that the person may be a sexually violent predator, as defined. Existing law provides, under certain circumstances, that this person may be required to stand trial, be found beyond a reasonable doubt to be a sexually violent predator, and be committed for 2 years to the custody of the State Department of Mental Health for treatment and confinement in a secure facility until his or her diagnosed mental disorder has so changed that he or she is not likely to commit an act of sexual violence.*

*Existing law authorizes the Board of Prison Terms to order that a person referred to the State Department of Mental Health remain in custody for a full evaluation for no more than 45 days, unless his or her scheduled date of release falls more than 45 days after referral. Existing law also provides that in cases where an inmate's parole or temporary parole hold will expire before a probable cause hearing is conducted, the agency bringing the petition may request an urgency review by a judge of a superior court in accordance with specified procedures.*

*This bill instead would authorize the board to order that a person referred to the State Department of Mental Health remain in custody for a full evaluation for no more than 45 days beyond the person's scheduled release date, and would revise procedures relating to probable cause review and hearing, including that the person remain in custody pending the completion of the hearing.*

~~Existing law requires the office of the Inspector General, the Youth and Adult Correctional Agency, the Department of Corrections, the Board of Corrections, the Youthful Offender Parole Board, and the Board of Prison Terms refer matters involving criminal conduct to the proper law enforcement authorities, and requires the entity making a referral to the local district attorney to also notify the Attorney General. Existing law further requires that if the local district attorney refuses to accept the case, or has not acted on the matter, as specified, the matter be referred to the Attorney General, as specified.~~

~~This bill would, instead, require that upon the occurrence or discovery of either a major incident as defined, or other criminal misconduct, committed by an employee or agent of the Department of Corrections in a department facility, a specified party at the scene immediately notify the department's Office of Internal Affairs. That office is then required to immediately notify the Attorney General as specified. In the case of a major incident, or pursuant to a memorandum of understanding vesting primary prosecutorial responsibility with the district attorney, the Office of Internal Affairs would be required to also immediately notify the local district attorney. The bill would~~



~~authorize the Attorney General, upon receiving notice of a major incident within a department facility, to initiate an investigation to determine whether an employee or agent of the department may have engaged in or participated in a major incident. In addition, under the bill, the Attorney General would have discretion to assume responsibility for the investigation and prosecution of criminal cases involving major incidents, or in other criminal cases pursuant to a memorandum of understanding with a district attorney.~~

~~The bill would also require the department to provide to the prosecuting agency with primary prosecuting responsibilities all known facts and circumstances, within a specified time. The reports required by this section would be confidential and inadmissible in a criminal or civil proceeding except as specified.~~

~~This bill also declares that nothing in the provisions precludes the local District Attorney or other law enforcement entity from investigating or prosecuting matters not being investigated or prosecuted by the Attorney General. The bill also reorganizes without substantive change, certain provisions of existing law.~~

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

*The people of the State of California do enact as follows:*

- 1    ~~SECTION 1. The Legislature finds and declares that~~
- 2    *SECTION 1. Section 6601.3 of the Welfare and*
- 3    *Institutions Code is amended to read:*
- 4    6601.3. The Board of Prison Terms may order that a
- 5    person referred to the State Department of Mental
- 6    Health pursuant to subdivision (b) of Section 6601 remain
- 7    in custody for no more than 45 days *beyond the person's*
- 8    *scheduled release date* for full evaluation pursuant to
- 9    subdivisions (c) to ~~(h)~~ (i), inclusive, of Section 6601;
- 10   ~~unless his or her scheduled date of release falls more than~~
- 11   ~~45 days after referral.~~
- 12   *SEC. 2. Section 6601.5 of the Welfare and Institutions*
- 13   *Code is amended to read:*

1     ~~6601.5. In cases where an inmate's parole or~~  
2 ~~temporary parole hold pursuant to Section 6601.3 will~~  
3 ~~expire before a probable cause hearing is conducted~~  
4 ~~pursuant to Section 6602, the agency bringing the petition~~  
5 ~~may request an urgency review pursuant to this section.~~  
6 ~~Upon that request~~ *Upon filing of the petition and a*  
7 *request for review under this section,* a judge of the  
8 superior court shall review the petition and determine  
9 whether the petition states or contains sufficient facts  
10 that, if true, would constitute probable cause to believe  
11 that the individual named in the petition is likely to  
12 engage in sexually violent predatory criminal behavior  
13 upon his or her release. If the judge determines that the  
14 petition, on its face, supports a finding of probable cause,  
15 the judge shall order that the person be detained in a  
16 secure facility until a hearing can be ~~held~~ *completed*  
17 pursuant to Section 6602. The probable cause hearing  
18 provided for in Section 6602 shall ~~be held~~ *commence*  
19 within 10 calendar days of the date of the order issued by  
20 the judge pursuant to this section.

21     *SEC. 3. Section 6602 of the Welfare and Institutions*  
22 *Code is amended to read:*

23     6602. (a) A judge of the superior court shall review  
24 the petition and shall determine whether there is  
25 probable cause to believe that the individual named in  
26 the petition is likely to engage in sexually violent  
27 predatory criminal behavior upon his or her release. The  
28 person named in the petition shall be entitled to  
29 assistance of counsel at the probable cause hearing. *Upon*  
30 *the commencement of the probable cause hearing, the*  
31 *person shall remain in custody pending the completion of*  
32 *the probable cause hearing.* If the judge determines there  
33 is not probable cause, he or she shall dismiss the petition  
34 and any person subject to parole shall report to parole. If  
35 the judge determines that there is probable cause, the  
36 judge shall order that the person remain in custody in a  
37 secure facility until a trial is completed and shall order  
38 that a trial be conducted to determine whether the  
39 person is, by reason of a diagnosed mental disorder, a  
40 danger to the health and safety of others in that the

1 person is likely to engage in acts of sexual violence upon  
2 his or her release from the jurisdiction of the Department  
3 of Corrections or other secure facility.

4 (b) *The probable cause hearing shall not be continued*  
5 *except upon a showing of good cause by the party*  
6 *requesting the continuance.*

7 (c) The court shall notify the State Department of  
8 Mental Health of the outcome of the probable cause  
9 hearing by forwarding to the department a copy of the  
10 minute order of the court within 15 days of the decision.

11 ~~nothing in this act is intended to interfere with or~~  
12 ~~diminish the primary prosecutorial responsibilities of~~  
13 ~~district attorneys now or in the future, except as~~  
14 ~~specifically provided by this act.~~

15 ~~SEC. 2. Section 6129.5 is added to the Penal Code, to~~  
16 ~~read:~~

17 ~~6129.5. (a) (1) Upon the occurrence or discovery of~~  
18 ~~a major incident within a facility of the Department of~~  
19 ~~Corrections, the supervisor or other responsible party~~  
20 ~~who is present at the scene shall immediately notify the~~  
21 ~~department's Office of Internal Affairs. Upon receiving~~  
22 ~~that notification, the Office of Internal Affairs shall~~  
23 ~~immediately notify the local district attorney and the~~  
24 ~~Attorney General. The notice required by this paragraph~~  
25 ~~shall be given regardless of whether a local district~~  
26 ~~attorney has also been notified of the circumstances or~~  
27 ~~allegations.~~

28 ~~(2) Upon the discovery of circumstances or allegations~~  
29 ~~suggesting that an employee or agent of the department~~  
30 ~~may have engaged in or participated in criminal~~  
31 ~~misconduct, the supervisor who is present at the scene~~  
32 ~~shall immediately notify the Office of Internal Affairs.~~  
33 ~~Upon receiving that notification, the Office of Internal~~  
34 ~~Affairs shall immediately notify the Attorney General. If~~  
35 ~~a memorandum of understanding vests primary~~  
36 ~~prosecutorial responsibility with the district attorney, the~~  
37 ~~notification provided by the Office of Internal Affairs to~~  
38 ~~the Attorney General shall also be provided to the district~~  
39 ~~attorney.~~

~~(3) As used in this section, major incidents include, but are not limited to, any of the following:~~

~~(A) Use of deadly force, or any use of force resulting in death or great bodily injury as defined in subdivision (e) of Section 12022.7.~~

~~(B) Suicide or attempted suicide.~~

~~(C) Unattended death.~~

~~(D) Allegation of sexual assault.~~

~~(4) Nothing in this subdivision shall preclude any district attorney or sheriff from investigating any incident within a facility of the department.~~

~~(b) Upon receiving notification of a major incident within a facility of the department, the Attorney General may initiate an investigation by the Department of Justice for the purpose of determining whether an employee or agent of the Department of Corrections may have engaged in or participated in a major incident.~~

~~(e) (1) After conducting an investigation pursuant to subdivision (b), the Attorney General shall have discretion to elect whether to assume responsibility for the investigation and prosecution of criminal cases involving employees or agents of the department that occur in facilities of the department or are related to conduct that is intended to or does occur in facilities of the department, subject to any limitations set forth in any memorandum of understanding entered into between the Attorney General and a district attorney. If a memorandum of understanding vests primary prosecutorial responsibility with the district attorney, the notification provided by the Office of Internal Affairs to the Attorney General shall also be provided to the district attorney.~~

~~(2) Upon independent discovery by the Attorney General or notification pursuant to paragraph (2) of subdivision (a), of circumstances or allegations suggesting that an employee or agent of the department may have engaged in or participated in criminal misconduct, the Attorney General shall have discretion to elect whether to assume responsibility for the investigation and prosecution of criminal cases involving~~

~~employees or agents of the department that occur in facilities of the department or are related to conduct that is intended to or does occur in facilities of the department. The Attorney General's discretion under this paragraph shall be subject to a memorandum of understanding between the Attorney General and a district attorney.~~

~~(3) Nothing in this subdivision is intended to preclude a district attorney or sheriff from investigating or prosecuting any matter involving an employee or agent of the department when it is not being investigated or prosecuted by the Attorney General. Nor is anything in this subdivision intended to preclude the Attorney General from investigating or prosecuting any matter involving an employee or agent of the department within any county where a district attorney has primary prosecutorial responsibility but elects not to file charges or fails to make a charging decision within a reasonable time.~~

~~(d) In addition to the immediate notification requirements set out in subdivision (a), the department shall, within 24 hours, provide the Attorney General and district attorney responsible for primary prosecutorial responsibilities with all known facts and circumstances in a manner and form specified by the Attorney General. The Attorney General or district attorney conducting or directing a criminal investigation shall have unlimited access to any and all areas within the institutional premises as well as to departmental staff, records, and evidence.~~

~~(e) The reports to district attorneys and the Attorney General required by this section shall be confidential and may not be used in any civil or criminal proceeding except as mandated by Brady v. Maryland (1963) 373 U.S. 83, Section 1043 of the Evidence Code, Section 832.7 of the Penal Code, or for purposes of criminal investigations or proceedings concerning the conduct of employees or agents of the department.~~

~~(f) It is the intent of the Legislature that the Department of Justice avoid any conflict of interest in representing the State of California in any civil litigation~~

1 ~~that may arise in a case in which an investigation has been~~  
2 ~~or is currently being conducted by the Bureau of~~  
3 ~~Investigation by contracting when necessary for private~~  
4 ~~counsel.~~

O

